IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Aamb Singh Vs. State of Rajasthan

S.B.CR. MISC. PETITION NO.119/2007

DATE OF ORDER :: July 13, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.G.M.Khan, for the petitioner.
Mr.Ashok Upadhyaya, Public Prosecutor for the State.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 19.12.2006 passed by Special Judge, N.D.P.S. Cases, Jodhpur (for short `the trial court' hereinafter), whereby an application filed by the petitioner under section 451 Cr.P.C., seeking interim custody of the vehicle bearing registration No.RJ04-T-0063, was dismissed.

I have heard learned counsel for the petitioner and the Public Prosecutor for the State. Carefully gone through the order impugned.

It is contended by learned counsel for the petitioner that the petitioner is a registered owner of the vehicle Mahendra and Mahendra Jeep bearing registration No.RJ04-T-0063, which was seized by the police while it was used as conveyance by transporting 10 kgs. of opium milk in 02 bags on 14.3.2006. It is further contended by the learned counsel for the petitioner that no useful purpose will be served in allowing the vehicle to remain at police station during the pendency of the case. Learned counsel for the petitioner has relied on a decision of Hon'ble Supreme Court in Sunderbhai Ambalal Desai vs. State of Gujarat, **AIR 2003 SC 638** and a decision of this Court in Ghanshyam alias Ganiya vs. State of Rajasthan, **2006(1) Cr.L.R. (Raj.) 286.**

Learned Public Prosecutor vehemently opposes the release of the vehicle in question on "Supurdaginama" during the pendency of the case and contends that undisputedly, the vehicle in question was found using as conveyance in transporting 10 kgs. of opium milk which is the commercial quantity and is liable to be confiscated under sub-section (3) of section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for short `the NDPS Act' hereinafter). He has relied on a decision of Hon'ble Supreme Court in Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab & Ors., **1999 (5) SCC 670** and a

decision of this Court in Prabhu Ram vs. State of Rajasthan (S.B.Cr.Misc. Petition No.739/2007) decided on 4.7.2007.

I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

Facts giving rise to the instant case are that on 14.3.2006, petitioner, who was driving the jeep in question, entered into the premises of saw machine of stone cutting near to Police Station, Kalyanpur as there was a "Nakabandi" by police. On the vehicle being checked, the police found a plastic bag under the seat of jeep, in which two bags containing 10 kgs. of opium milk were found. The vehicle, which was found using as a conveyance and transporting a commercial quantity of opium milk is subject to confiscation under sub-section (3) of section 60 of the NDPS Act.

Sub-section (3) of section 60 of the NDPS Act provides that any animal or conveyance used in carrying any narcotic drug or psychotropic substance, [or controlled substances] or any Article liable to confiscation under Sub-sec. (1) or Sub-sec.(2) shall be liable, to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent if any, and the person-in-charge of the animal or conveyance and that each of

them had taken all reasonable precautions against such use.

In the instant case, the petitioner himself is the owner of the vehicle in question and at the relevant time, he was driving the vehicle and was found transporting the opium milk weighing 10 kgs., which is the commercial quantity.

In Dharm Pal vs. State of Haryana, **2000 (2) EFR 44 (P&H)**, the Punjab and Haryana High Court held that the petitioner himself was driving the vehicle at the time of the alleged occurrence. There is nothing to show at this stage, that the vehicle in question was used for carrying the Narcotic Drugs & Psychotropic Substance without his knowledge or connivance or that he had taken all reasonable precautions against the misuse. Therefore, unless the petitioner is able to establish these factors, the vehicle in question is liable to be confiscated and cannot be returned on superdari, at this stage. In view of the specific provisions contained in Sec.60 of the NDPs Act, the vehicle cannot be ordered to be released on superdari to the petitioner therein at this stage.

in Ganga Hire Purchase Pvt. Ltd. vs. State of Punjab & Ors. (Supra), the Honb'el Supreme Court held that the very purpose for engrafting Sub-sec.(3) of Sec.60 of the NDPS Act is

to have it as a deterrent measure to check the offences under the NDPS Act, which have been found to be dangerous to the entire society. The expression "owner" has been defined under Sec.2 of sub-section (30) of the Motor Vehicles Act, 1988, which provides that "owner" means a person in whose name a motor vehicle stands registered, and where such person is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase, agreement, or an agreement of lease or an agreement of hypothecation, the person in possession of the vehicle under that agreement.

In the instant case, the vehicle found in contravention of NDPS Act transporting commercial quantity of opium milk is liable to be confiscated and, therefore, in my view, the petitioner is not entitled for interim custody of the vehicle in question. The decisions relied on by the learned counsel for the petitioner turn on their own facts and are no help to the petitioner in view of the facts and circumstances of the case.

For the reasons stated above, I do not find any merit in the instant criminal misc. petition. The petition is dismissed accordingly.

[H.R.PANWAR],J.

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